

ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )

A Proposal for Revising the M D S  
And ITFS Regulatory Regime )

Filed by Wireless International, the National  
ITFS Association and the Catholic  
Television Network )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RM-10586  
DA 02-2732

**REPLY COMMENTS OF  
POLAR COMMUNICATIONS MUTUAL AID CORPORATION**

Polar Communications Mutual Aid Corporation ("Polar"), by its attorneys, hereby submits reply comments in this proceeding in accordance with the Commission's schedule.<sup>1</sup>

Polar generally supports the ideas for streamlining the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") regulatory process that were set forth in the White Paper ("White Paper") prepared by the Wireless Communications Association, International, the National ITFS Association and the Catholic Television Network. Polar believes that the Commission should review the continuing utility of all of its M D S and ITFS rules, and eliminate those that are no longer necessary or effective in promoting the use of M D S and ITFS facilities and services.

<sup>1</sup> *Wireless Telecommunications Bureau Seeks Comment on Proposal to Revise Multichannel Multipoint Distribution Service and the Instructional Television Fixed Service Rules*, RM-105 18, Public Notice, DA 02-2732 (rel. October 17, 2002) ("Public Notice"). The FCC extended the pleading cycle by one week. *See. Wireless Telecommunications Bureau Announces Limited Extension of time to File Comments and Reply Comments on Proposal to Revise Multichannel Multipoint Distribution Service and the Instructional Television Fixed Service Rules*, Public Notice, DA 02-3175 (rel. November 14, 2002).

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Polar has recently acquired the geographic area MDS license for the Grand Forks, North Dakota Basic Trading Area (“BTA”), and is presently attempting to bring wireless high-speed broadband services to the area. Polar can more readily accomplish its service goals if it can focus upon the technical and business problems that must be addressed in bringing wireless broadband services to Rural America, without being distracted and disrupted by the need to comply with outmoded Commission rules and procedures.

### **Elimination of Site-by-Site MDS Licensing**

Polar agrees with the White Paper and other commenting parties that holders of MMDS and ITFS geographic licenses should not be required to apply for Commission consent to construct new facilities or modify existing facilities. Like cellular, Personal Communications Service, 700 MHz Band and other Commission wireless licensees, MDS and ITFS geographic area licensees should be free to construct and operate facilities within their geographic service areas subject only to the technical standards necessary to minimize interference. They should be able to construct, supplement and reconfigure their networks without site-specific approvals from the Commission, except in cases where environmental assessments are required.

The provision of broadband service requires high quality signals, reliable and continuous service, and rapid and flexible responses to customer desires. The needs for quality signals and reliable service give broadband MDS operators a paramount incentive to coordinate their frequency usage with that of nearby co-channel and adjacent channel users. This incentive, coupled with a set of technical standards, should prove sufficient to eliminate most interference problems without the need for Commission intervention or oversight. At the same time, the needs for quality, reliability, speed and flexibility require broadband MDS operators to be free to

add, relocate and modify their transmitting facilities frequently and on short notice. They simply cannot serve or retain their broadband customers if they have to wait three-to-nine months or more to prepare, prosecute and obtain Commission grants of site-specific applications before they can implement needed changes.

**The Proposed “Substantial Service/Safe Harbor” Approach  
Is Superior To the Current MDS Build-Out Requirements**

The White Paper proposes replacement of the current MDS “build-out” requirements with a “substantial service” performance standard, coupled with safe harbors appropriate to wireless broadband providers. The current MDS five-year build-out requirements may have been reasonable for wireless cable operations, but make little sense with respect to the two-way broadband services that are rapidly becoming the primary use of the MDS frequencies. **As** BellSouth correctly stated, the proposal will “unshackle the MDS/ITFS industry from the antiquated broadcast-style regulation and overly conservative technical rules that have hobbled rapid deployment of MDS/ITFS spectrum for new wireless services.”

**As** with the Wireless Communications Service licensed under Part 27 of its Rules, the Commission should allow MDS licensees the flexibility of making a case-by-case showing of “substantial service” at the time of license renewal. In order to furnish a degree of certainty and encourage investment, the Commission should establish a series of safe harbors (such as service to “niche markets,” service to under-served rural areas, provision of advanced services) that will allow MDS operators to determine that they have met the “substantial service” requirement. This approach will allow MDS operators to be regulated similarly to other flexible use services.

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<sup>2</sup> BellSouth Comments (Introduction Section),

The Commission Should Eliminate  
**Unnecessary MDS Regulations And Reporting Requirements**

Polar agrees with the White Paper and other parties that the Commission should review its MDS regulations, and eliminate requirements that increase regulatory costs without significantly protecting the public interest. Rules that can be eliminated at no loss to the effectiveness of the Commission's mission include: (1) the Section 21.903(b) restrictions on control and ownership of customer equipment; (2) the Section 21.11(a) requirement for annual updates of the FCC Form 430 Licensee Qualification Report; (3) the Section 21.911 Annual Report; and (4) the Section 221.38 requirement for prior Commission approval of pro forma assignments of license and transfers of control

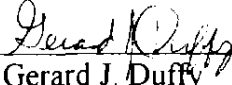
**Reservations Regarding Proposed New Bandplan**

Polar's primary reservation regarding the White Paper concerns the proposed new band plan. Whereas the plan might be attractive if proposed and adopted in a vacuum, the problem is that Polar and other MDS licensees have already spent millions of dollars to implement broadband MDS services, and will spend additional millions pursuant to the current MDS band plan. Particularly in the rural areas served by Polar, broadband MDS margins are small and business plans have not included expenditures of substantial sums for frequency relocations. Moreover, it is Polar's experience and understanding that broadband customers are very apt to complain about service interruptions, even very brief ones. Therefore, the Commission should not require existing broadband MDS operators to incur substantial unforeseen expenses and service interruptions to relocate to different frequencies. Rather, frequency relocations should be minimized, and any MDS operator required to relocate should be compensated by the Commission or by the private entity or entities requesting a particular MDS operator to relocate.

### **Conclusion**

Polar generally supports the White Paper proposals, and believes that site-by-site licensing, build-out and other MDS and ITFS rules should be eliminated because they are no longer necessary or effective. The proposed re-examination of the MDS and ITFS rules is an excellent step towards the provision of new wireless broadband services to rural customers

Respectfully submitted,  
**POLAR COMMUNICATIONS  
MUTUAL AID CORPORATION**

By  <sup>D-E</sup>  
Gerard J. Duffy  
Douglas W. Everette

Its Attorneys

Blooston, Mordkofsky, Dickens  
Duffy & Prendergast  
2120 L Street, NW (Suite 300)  
Washington, DC 20037  
Telephone (202) 659-0830  
Facsimile (202) 828-5568  
E-mail [gjd@bloostonlaw.com](mailto:gjd@bloostonlaw.com)

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**CERTIFICATE OF SERVICE**

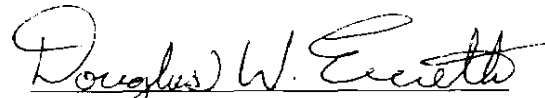
I, Douglas W. Everett, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing Reply Comments were served by first class U.S. mail or hand delivery\* on this 27<sup>th</sup> day of November, 2002 to the persons listed below

\*Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, DC 20002

Thompson T. Rawls, II  
Charles P. Featherstun  
1155 Peachtree Street, N.E., Suite 1800  
Atlanta, GA 30309-3610  
***Counsel for BellSouth Corp. and BellSouth  
Wireless Cable, Inc.***

\*Qualcomm International  
Portals II  
445 12th St. S.W.  
Room CY-B402  
Washington DC 20554

\*Charles M. Oliver  
Wireless Telecommunications Bureau  
Public Safety and Private Wireless Div  
Policy and Rules Branch  
Federal Communications Commission  
445 12th Street SW - Room 4-C367  
Washington, D.C. 20554

  
Douglas W. Everett